

# Basics on Criminal Expungements

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**The information in these fact sheets is for general purposes only. It is not legal advice. Every case is different and may need help or advice that is not covered in these fact sheets. Talk to an attorney for legal advice about your case.**

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# UNDERSTANDING YOUR CRIMINAL RECORD

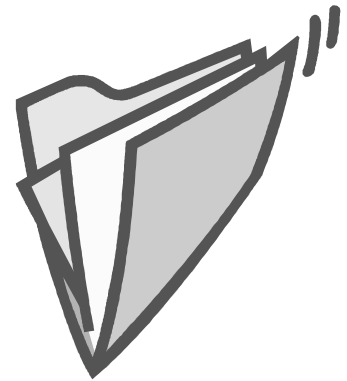
It is important to know that your criminal history can cause you problems whether you have been convicted of a crime or not. Almost anyone can look at the records of your criminal history. Employers and landlords review them to make decisions about job or rental applications. You should know what is on your criminal record.

## WHAT IS ON MY CRIMINAL RECORD?

These things are on your criminal record

- Arrests that did not lead to charges
- Charges that were dismissed
- Charges that were acquitted
- Charges you plead guilty to (it does not matter if you completed probation or another court-ordered plan or not)
- Charges that a jury found you guilty of, (it does not matter if you completed probation or not)
- Results of the cases

Criminal records can also have information about sentencing like jail time, prison time, probation and parole.



## WHO KEEPS CRIMINAL RECORDS?

The Minnesota Bureau of Criminal Apprehension (BCA) has criminal records for the whole state of Minnesota. Their “public records” (records that anyone can look at) list all convictions. Their “private records” (only some people can see these) list arrests, juvenile criminal history, and all court and conviction information that is more than 15 years old from the date the sentence was completed. The BCA keeps and updates records from reports they get from the county and courts.

Cities and counties keep criminal records for things that happened in their area, (jurisdiction), not the whole state. City and county records are all “public” except juvenile cases. This means they do not divide them into public and private like the BCA. City and county records include misdemeanors and petty misdemeanors that might not be on the BCA record.

## HOW DO I GET A COPY OF MY CRIMINAL RECORD?

It is good to know exactly what is on your criminal record. You can get copies from the BCA and the county where the crime happened.

- **BCA:** send a request to the BCA by mail or by go to the BCA in person. If you need to do this by mail, call for instructions and forms (651) 793-2400. The BCA is at 1430 Maryland Ave. E, St. Paul, MN 55106. If there are mistakes on your record that you want to fix, like a crime that you did not do, call the BCA at (651) 793-2400 and ask how to fix it.
- **County:** contact the county court first. You can also contact the county’s Community Corrections or Sheriff’s office, but they will not have all the records.

## HOW LONG DO RECORDS STAY PUBLIC?

The BCA keeps records public for 15 years after the sentence is completed. After that the record becomes private.

All other agencies keep their records public forever.

## WHO CAN LOOK AT “PRIVATE” CRIMINAL RECORDS AT THE BCA?

In general, landlords and employers can not see private records. **But, if you sign a consent form, the landlord or employer can get your private records.** Most landlords or employers will ask for this consent before they rent to you or give you a job.

This is why people want to try to “expunge” their public and private records. Expunge means get them sealed so that most people cannot look at them. Only some criminal cases can be expunged.



# BASIC INFORMATION ABOUT CRIMINAL EXPUNGEMENTS

## WHAT DOES EXPUNGEMENT MEAN?

Expungement means sealing a public record, like a criminal record. If your criminal case is “expunged,” then a landlord, employer, or any other private citizen searching public records won’t be able to look at it.

The police and other public officials can look at your sealed files if you are applying for a law enforcement job. They can get a court order to look at sealed files for criminal investigations, prosecutions, or sentencing in a new case.

Every state has different expungement laws. These fact sheets are for Minnesota.

**If you are an immigrant there are special rules about expungements. See the section *Expungements and Immigration*.**

## WHY WOULD I WANT AN EXPUNGEMENT

Even if you were not convicted of the crime, having it on your criminal record can prevent you from:

- Getting a job
- Getting housing
- Traveling to and from Canada
- Visiting relatives in a jail or prison
- Getting a student loan.
- Getting some government benefits



## WHERE DO I GO IF I WANT AN EXPUNGEMENT?

You have to petition for an expungement in the county where the crime happened. If you are trying to expunge more than 1 case, but they happened in different counties, you have to do them separately.

## WHEN WOULD A JUDGE NOT GIVE ME AN EXPUNGEMENT?

A judge can turn down an expungement request if:

- You have not finished probation or parole or if you are still under the supervision of corrections
- The judge thinks you may commit another crime. They will look at how long ago the crime happened and how serious it was.
- You did not show a good reason to expunge your records (like showing that having the records public is hurting you somehow)
- Your reasons for wanting the expungement are not good enough for the county to spend the time it takes to do the paperwork.
- Convictions for violent crimes are very hard to expunge.

Getting the court to expunge a criminal record for something that you were not convicted for is not usually hard, but it does take a lot of paperwork.

## WHAT KINDS OF CASES ARE THE COURTS MOST LIKELY TO EXPUNGE?

There are 3 types of cases that the courts are most likely to expunge:

1. Cases that were resolved in your favor like

- acquittals
- some dismissals of charges (either outright or by suspended sentence)
- an arrest that was never formally charged
- the completion of some pre-trial diversion program.

This does not include acquittals by reason of mental illness or cases where someone pled guilty to a crime and the judge withheld sentencing.

2. A controlled substance violation (like a drug conviction) that was dismissed and discharged because you did a diversion program.

3. A crime you committed as a juvenile but you were sentenced as an adult, **and** excused from any more court requirements, like probation. This does not include offenses committed when you were a juvenile and assigned to Extended Juvenile Jurisdiction.

## WHAT THINGS ABOUT MY CASE MAKE AN EXPUNGEMENT MORE LIKELY?

Some things make your expungement more likely.

- If your crime was not severe
- If your crime was not violent
- If your crime did not have any victims
- If the crime happened a long time ago
- If you have not had any crimes on your record since then
- If the conviction is making things very hard in your life and on the lives of the people you financially support
- If you have rehabilitated yourself
- If this is the only time that you committed this type of offense



## WHAT IF I WAS CHARGED WITH A CRIME BUT NEVER HAD TO GO TO COURT?

In some cases you can ask to get your arrest records back from the arresting agency (police, sheriff) and the BCA.

- If charges were dismissed with no finding of probable cause.
- If the prosecutor didn't file charges and no grand jury indictment was made in the case.

This only applies if you do not have a felony or gross misdemeanor in the 10 years before the arrest.

In these cases, you do not have to file a petition with the court for an expungement. Write a letter to the agencies that have copies of the record (police, BCA) asking for the record. Keep a copy of the letter. The record and **everything** in them- like fingerprint cards- should be returned to you. No one should have that record left on their lists.

## **CAN I GET AN EXPUNGEMENT IF I WAS CONVICTED?**

It is hard to expunge cases when you were convicted of a crime. This is true whether the court found you guilty or you pled guilty.

The law says that granting expungement in these cases is up to each individual judge but that expungements should only be done in rare cases. You need to prove that:

- You have rehabilitated yourself
- The expungement benefits you
- The benefit to you is greater than the disadvantage to the public (which will no longer know about your criminal history)

Proving these 3 points can be hard. You may want to get help or advice from an attorney.

It does not matter if the conviction resulted from a jury verdict, a judge's ruling, a plea bargain, or a dismissal after successful completion of probation. It does not matter if you were really innocent.

## **WHAT CANNOT BE EXPUNGED?**

You cannot ever get an expungement if your conviction requires registration like sex offender registration.

Certain traffic offenses, such as speeding, cannot be expunged because they are not considered "crimes" under Minnesota law. And even if criminal traffic offenses are expunged from your criminal record, they are still on your driving record.

## **WHAT IF SOMEONE USED MY NAME IN A CRIME?**

If someone has committed a crime and used your name, it could cause you a lot of problems. You should contact or visit the Bureau of Criminal Apprehension (BCA) and ask to be a part of their "Questionable Identity Project." The Questionable Identity Project works to make sure that victims of identity theft do not pay for somebody else's crimes.

The BCA will take your fingerprints and compare them against the offender who used your name in the crime.

Once the BCA determines that you did not commit the crime, it will update your criminal record and let anyone who looks at it know that you are a victim of identity theft. For more information on this program, contact the BCA at 651-793-2420.



# HOW DO I FILE FOR AN EXPUNGEMENT?

## DO I NEED AN ATTORNEY?

You do not have to get an attorney but expungements are hard to win and take a lot of paperwork. An attorney can give you good advice for your situation. If you forget just one required step, such as notifying the police department with your petition, you may have to start over and file everything again.

Even if your case is simple, an attorney may help you in a number of important ways, including:

- Interpreting your criminal history
- Understanding the law that applies in your case
- Writing as many good reasons as possible in your petition
- “Serving” (sending copies of the paperwork to) everyone that needs to know about the hearing
- Writing a reply to the judge if anyone “served” responds to your petition
- Appearing in court to call witnesses and present oral arguments
- If you get your expungement, an attorney will “serve” the order (decision) on everyone who needs to know and make sure that they follow the order

If you cannot get free legal services, you can hire an attorney to represent you or just to give you advice.

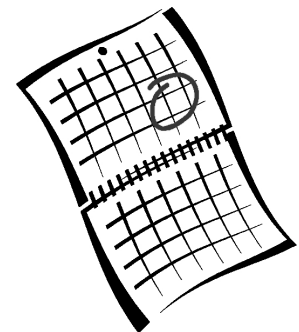
## WHAT IF I HAVE MORE THAN ONE CASE TO EXPUNGE?

Check with the court clerk for your county’s rules. You will probably have to file a separate petition for each case that you want expunged in that county. Some counties let you ask for more than one expungement in your petition. Ask if that affects the scheduling.

If your cases were in different counties, you will have to file in each county where they took place.

## HOW LONG DOES IT TAKE?

The expungement process takes about 6 months. The law says you have to tell the agencies that keep track of your criminal records at least 2 months before your hearing. If you get an expungement they have 2 months after your hearing to appeal if they do not think you should have won.



If you are writing to ask for return of a record because you never had to go to court it should be faster.

## WHAT FORMS DO I NEED AND WHERE DO I GET THEM?

The clerk at your county courthouse can provide you with a “Criminal Expungement Packet” that has the blank forms and instructions you need. Some counties charge for this packet. If you are asking for expungement of a case with a conviction, the filing costs are about \$300. The *Notice of Hearing and Petition* form can also be found online at [www.courts.state.mn.us/ctforms](http://www.courts.state.mn.us/ctforms). Some counties have the other forms you need on their website, but if they do not you will have to get them from the court clerk.

If you have a low income, you may not have to pay. Ask how to file an *IFP* (in forma pauperis) form that shows you cannot pay.

Before you start, talk to the court clerk and find out how the hearing date is set. In some counties the court sets a date, in others you have to pick a date.

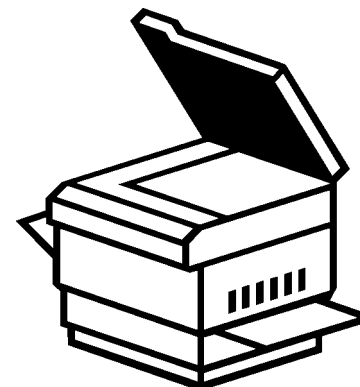
Some counties will give you your criminal record for that county. Be sure to ask, because you need it to fill out the forms. If you cannot get it at the courthouse, you will have to write to the county to get it.

Read the instructions and fill out the forms. They must be typed or hand written very neatly. You should have the following forms:

- **Notice of Hearing and Petition for Expungement-** this is the longest form that you fill out with all the details about yourself and your case. See the section *What Goes in My Petition?* for how to fill it out.
- **Order to Seal the Record-** if you win, this is the form that gets sent out showing that your case is expunged.
- **Affidavit of Service-** this form is proof that all the agencies were told about the hearing

The following sections explain these forms. When they are complete, bring them back to the courthouse and file all the papers with the court clerk.

**Make sure you keep copies of EVERYTHING for yourself.** You need to remember what you said and when your court date is. If you get your expungement it will be hard to get copies from the court later if you need them. If you are an immigrant, you will need copies to show the USCIS (new name for INS). See last section *Expungements and Immigration*.



### **The Order to Seal the Record**

*The Order to Seal the Record* is the form the judge signs if you get your expungement. You need to fill parts of it in and file it with all your papers even though you do not know what the decision will be. This makes it easier for the court to handle all the cases it gets.

There are 2 different *Order to Seal the Record* forms. One is for cases if you were convicted and one if you were not convicted. Only file the one that matches your case. Ask the court clerk which parts you should fill in. The judge will fill in the rest. There are more details about this in the section called *What if I Get an Expungement?*

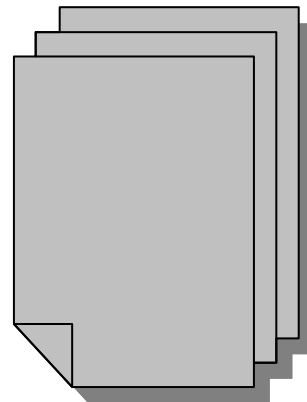
### **Affidavit of Service**

If you ask for an expungement you are going to have to tell all the agencies that have your record. You do this by “serving” them with copies of your court papers. To “serve” means to let someone know in writing about a legal proceeding. You must “serve” everyone who has records on you that you want expunged. The papers that you send are the *Notice of Hearing and Petition*, the *Order to Seal the Record*, and the *IFP* if you have one. This means making enough copies of everything to send to the list below.



- The Minnesota Bureau of Criminal Apprehension (BCA)
- The Minnesota Attorney General (Public Safety Division)
- The County Attorney (Records Division)
- The County Department of Community Corrections (Records Division)
- The City Attorney (Records Division)
- The City Police Department (Records Division)
- The arresting agency (if not included above)

**You** cannot “serve” the parties. Someone else has to mail the copies of the papers to each agency responsible for your criminal records at least 63 days before your hearing. The papers can also be hand delivered. Most of the agencies and their addresses are on the *Affidavit of Service*. Then the person “serving” has to sign the *Affidavit of Service* in front of a notary public. Make sure you put this with your other papers when you bring them to the court clerk.



### **AFTER YOU FILE THE PETITION**

After you have filled everything out and served everybody, bring all the papers to the court clerk. You have to file the original documents before the hearing. Most counties want the documents filed 30 days before the hearing. If you do not file your documents, the hearing will be cancelled.

You have to wait to see if the agencies respond to your expungement petition. They can support your request or they can tell the judge why they think you should not get your expungement. If they send a letter to the court, you will get a copy. This is how you know if they are going to be at the hearing or not.

You can respond to what they say in writing. If they do not think you should get the expungement, it is important that you respond and explain why you think they are wrong. You should make copies and “serve” everybody again. This all happens before the hearing. If possible, talk to an attorney for help in writing a good answer. Be ready to explain your reasons in court.

## WHAT GOES IN MY PETITION?

The longest form you need to fill out is the *Notice of Hearing and Petition for Expungement*. This is where you put down all the information about yourself, and your case, and why you should be given an expungement. Take the time to do this well. Get help from an attorney or advocate if you need to. You will need to know all of the things below.

### ☐ **A Complete List of All Your Names and Addresses and your Birth Date (numbers 2, 3 and 4 on the form)**

You will need to list all of your names and addresses since the case that you want expunged began. Double check your criminal record to make sure you have not forgotten any.

### ☐ **Why You Want an Expungement (number 5 on the form)**

You need to explain to the court why you want the expungement. You should give specific details about problems it has caused you and why your life would get better if the record were expunged. Use another piece of paper if you need more space. Put in details like:

- The jobs you have applied for and not gotten. Especially if it was because of your criminal record.
- Why it is important that you get a job, like if you need the money to support an elderly family member or a child, because no one else does.
- Any housing you applied for and were turned down. Especially if it was because of your criminal record.
- Any professional licenses you have applied for and been turned down. Like a teacher's or healthcare license.
- If you are trying to adopt a child or do foster care and are turned down because of your criminal history
- If you are on probation at a new job and need to clear your record to keep your job.
- If you were fired or laid off from a job you had for a long time because your employer checked your criminal history. If your employer had been happy with your work up until then, make sure you put that in.
- If you are in school and need to clear your record to get a job after school.
- If you want to be able to travel to Canada.
- If you get government benefits because you cannot find a job.
- If you have a hard time getting full-time hours at your job, or a better job because of your criminal record



### ☐ **Previous Convictions and Arrests (number 6 on the form)**

You must give a complete list of all your convictions, and other arrests or criminal charges even if they did not lead to convictions. You must put in everything from all counties and states. You must put in traffic cases in Minnesota.

To make sure you have listed all the arrests or cases that are on your record, check your list against your criminal record. Get printouts from the county courthouse and the Bureau of Criminal Apprehension (BCA). If you have a criminal record in another state, also get a copy of your criminal record from the FBI. If you forget anything, the court might think you are trying to hide something.

It is good to review all these records. You may even find clerical errors that you can fix by going to your county records department.

Some criminal offenses might not be listed on the BCA criminal histories—but you still need to put them on your petition. List your traffic offenses too, like Driving While Intoxicated, Driving after Revocation, Driving after License Suspension, Driving without a License, and Driving without Proof of Insurance. Check with your court clerk to see if the judges in the county will accept a listing of traffic cases by attaching the defendant history from your county courthouse to your petition.

☐ **Prior Expungement Requests (number 8 on the form)**

The Petition asks you to list all the times you have asked for a criminal expungement for any case. Make sure you list them and tell if you got one or not.

☐ **Why You Qualify for an Expungement (number 9 on the form)**

Check the box that fits your case. For example, if you did not plead guilty and your case was dismissed, check the box “a criminal matter was resolved in my favor.”

☐ **Details of the Offense (numbers 10, 11, and 12 on the form)**

You need to write all the details like:

- The date of the offense
- The police department that arrested you
- The court file number
- The date the case was resolved, and how it was resolved. Like if it was dismissed, or if you pled guilty.
- Probation release date
- Other details that could help your request. Remember that the court and prosecutors have the police reports, the court record, and other information to compare against your petition. Be honest. If you can, talk to an attorney about what information to add.
- The names of any victims (or that there were not any victims)
- If there is a current order for protection (OFP), restraining order, or other no contact order, that say you cannot contact the victims of the case you are asking to be expunged. Attach a copy of the order
- If you had any previous orders for protection or restraining orders against you.

☐ **Details Regarding Your “Rehabilitation” (number 13 on the form)**

**If you were convicted**, you must show the judge that you have changed and will not commit a crime again. List the things you have done to make changes in your life that show your rehabilitation. This could be things like:

- Why you committed this offense in the first place and what changes you’ve made that show you won’t do it again. Give specific details, like you have different friends, have gone to a treatment program, have children and are more responsible; understand the laws better now, etc.
- If you have been through alcohol or drug treatment, write down the name of the program, the date you finished it, and some of the things you have changed about yourself because of the program. Attach any documents that show you completed the program to your petition.

- Did you go to Narcotics Anonymous (N.A.) or Alcoholics Anonymous (A.A.) meetings? If yes, attach proof that you went, like a letter from your sponsor or signed A.A. cards. Explain how your thinking and actions have changed because you went.
- Are you active in a church, the community, volunteering, or some other good activity? If yes, give details and ask people from your church or community to write letters in support of your petition. Letters could say things like you aren't likely to commit another crime, you need the expungement for specific reasons, you are a good, responsible, upstanding person, etc.

**If you were not convicted** of the offense, check the box stating that there was no conviction for this offense. You do not need to write a statement about rehabilitation.

### **NOTICE OF HEARING**

In most counties the clerk will tell you the court date, time, judge and where the hearing is going to be. Fill in that information in the Notice of Hearing section. If the clerk cannot give you that information, they will tell you how to get it. After you fill it in, go to the last page to print your name, address and phone number on the blanks below the signature line.

Do not sign it until you are in front of a notary public. You will need to show your photo ID.



# THE HEARING AND DECISION

## GETTING READY FOR YOUR HEARING

Here's a quick checklist to look at before you go to court

- Have copies of all your papers. Make sure they are neat and organized, and that you know where to find things and what they say.
- Practice talking about your case with a friend. It is very important that you know what to say and can say it clearly. It is very important to be able to explain your rehabilitation to the judge.
- Look your best for court. Remember to be respectful, do not interrupt, and speak clearly when it is your turn to speak.
- Be on time!!!

## WHAT CAN THE COURTS DO?

Each judge understands the law differently and decides how much they can help you. Even if a judge gives you an expungement, it may only be for the records at that judge's county courthouse. It may not be expunging the records at the other agencies like:

- Bureau of Criminal Apprehension (BCA)
- Attorney General
- County Attorney
- County Department of Corrections
- County Sheriff
- City Attorney
- City Police
- Any other agency involved in your arrest



No matter what happens, make sure you save copies of everything. You may need them again, especially if you are denied your expungement and want to try again.

## WHAT IF I GET AN EXPUNGEMENT?

If you win your expungement hearing, the court should “serve” the Order on all parties. The decision is not final until this is done. Serving the Order starts the 60 day period that agencies have to appeal the final decision. The Order is one of the forms that come in your Expungement packet.

You should check with your court clerk how the “Order” or decision is served. Most county courts do it after the hearing. But some counties may ask you to do it. Ask if they have blank forms that you can fill out and what you need to do.

Sometimes the judge orders that only the court records are sealed and not other agency records. Most landlords and employers check the agency records, especially the BCA records. If the BCA is not ordered to seal the record, the public may still be able to find your criminal history.

Sometimes landlords and employers check only the county courthouse records. In this case, if the judge ordered the court's record sealed, you may be more likely to get a job or apartment.

Check the agencies records after 60 days to make sure they are sealed. If they are not, find out why they have not followed the judge's order.

If you get turned down for housing or employment, find out what records the landlord or employer checked. If they checked records that the judge ordered sealed, check those records to make sure they do not contain the expunged case.

You still have to tell certain agencies about your criminal record even if it is sealed. You have to tell about your criminal history if you want to get an attorney's license or other professional licensing. If you have a question about these situations, call an attorney.

## **WHAT IF I DO NOT GET AN EXPUNGEMENT?**

### **Working with Your Criminal Record**

Some jobs and housing require a clean record. Find this out before applying. It is always best to be up front about your record and ask if there is any way around it. Be ready to tell the person how you have changed and that your past problems won't happen again.

If you have a job or housing interview get ready for it ahead of time. Write out your statement, explaining your past situation and what you've done to change. It may be helpful to practice in advance with a friend.



### **Can I Ask for an Expungement Again?**

Yes. To decide if and when, read the court order denying the first request and try to remember what the judge told you at the hearing. Why was your request denied? Look at your record. Is there anything you can do to prove that you've changed and those incidents won't happen again? If you can, talk to an attorney about the cases in your criminal history, the expungement denial, and your chances for success. Ask how you can make your petition better next time. You will have to go through the same filing process again. It is usually best to wait about a year.

## EXPUNGEMENTS AND IMMIGRATION

If you are an immigrant, and your status is being reviewed, you must tell USCIS (INS) about your criminal record even if it was expunged. Having a case expunged may look good to an immigration officer, but you will still need to know all the details of the case. INS can find out about your criminal record. If you do not tell them, they will think you are trying to hide something from them.

Anytime you are talking with an attorney or immigration officer, you will need to tell them about your records. Save a copy of your records BEFORE you have them expunged. It is very hard to get copies of your case from the courts after an expungement.



**Talk to an immigration attorney any time you have any questions about this.**